

ONE NEUTRAL'S VIEW: SUGGESTIONS FOR NEW (AND NOT SO NEW) MEDIATORS

1. Be Yourself:

You can not transform your personality just because you put on a mediator's cap. Your true self will show ultimately, so why not be yourself from the outset. There is no one mediator "type" or "style". Pay attention and stay attuned to the Mediation process and your personality will adjust naturally to the process.

2. Describe the Benefits of Mediation in Your Introduction:

Sure, you want to describe your experience and announce your credentials to the parties. But, spend a few moments describing what your experience tells you about mediation as compared to traditional dispute resolution and litigation:

"In litigation and formal complaint processes, the decision making official has no stake in the outcome of the dispute and does not focus on the parties' relationship or the future. In Mediation the decision-maker is--You! You design your own solution that focuses on your relationship and the future.

"In litigation you speak to a Judge or an agency official. In Mediation you speak to each other. Open and frank communication, and respecting each person's right to say what is on their mind, is crucial to the Mediation process."

Attribute previous Mediation success to the process and the parties' willingness to communicate and listen carefully. Don't highlight yourself as the reason for success.

3. Listen Carefully to Positive Comments Made By One Party About the Other:

Often one party says something nice about the other, such as "I could not grant leave because X is the 'vital cog in my work group'." When you hear this repeat it and direct it to the subject of the compliment. Ask, "How does that make you feel?" This reveals that there are good feelings about the relationship even if there is a dispute.

4. Pick Up An Expression of Willingness to Change Requested Remedies:

A party often sends a signal as to their true interest, which may indicate a willingness to change a previously stated position. Often these are expressed in very general terms. When you hear this, concentrate on asking the party to suggest specific alternatives or options based on this expression of change. Then ask the other party an open-ended question such as: "What do you think about these alternatives/options."

5. Don't Dominate the Conversation--"Direct Traffic" Between the Parties:

You want the parties to communicate to and with each other. Keep your conversation to a minimum--directing traffic--comments to the parties. Keep track on the process, and when the parties deviate, bring them back.

6. Describe the Purpose of A Caucus In General, NOT Specific Terms:

Tell the parties in your opening that you may call a caucus with one of them. Advise them that the purpose of the caucus is to clarify information that has surfaced. That is, describe it as your need to seek clarification.

Never say: "I would like to caucus to see if there is any information that you want to share with just me." Never say: "I want to caucus now to discuss relationships."

7. The First Caucus Question: "Is There Anything Else I Need to Know?"

It is guaranteed that you will receive very important information in response to this question. It is a human trait not to reveal all information to a party with whom you have a dispute. So, open the caucus with this question and be ready to listen carefully and actively.

8. Firmness Has Its Place--But Not In Your Opening:

Firmness is an important trait if the parties are not cooperating in the process, such as interrupting when the other is speaking. However, your opening is the place where you want to develop the parties' trust in the Mediation process, and with you. Empathy, understanding (different than acceptance/agreement), expressions of feeling are very important as "trust-builders". Firmness is not.

9. Room Design Is Important to the Mediation Process:

The **shape of the table** is important. You as the Mediator want a table shaped to permit you to see the other parties, and especially to see their non-verbal reactions to comments made. Remember an important component of communication is to hear what is **not** being said! A narrow, rectangular table may prevent this. A round table may accelerate observing the communication.

10. Summarize Regularly:

Regularly summarize issues that have surfaced and agreements made. Record these and repeat them for the parties to hear. Reciting areas of agreement becomes

important for those times when an issue remains unresolved, and the parties start to think that they won't solve the problem.

11. Keep At the Parties to Create Options and to Raise Ideas:

"Brainstorming"--looking for any idea or thought on an issue is a great tool that often leads to creative solutions. Encourage openness by reminding the parties that evaluation of each idea will come later--after all thoughts are raised. Early evaluation, especially negative reaction, will stifle desire to volunteer other ideas.

12. "Are there Other Issues?"--The Loaded Question:

The Mediator will get a great deal of information from asking each party "Why are we here today?" or "What are the issues from your point of view?" However, after the first round of information sharing, it will be important to ask: "Are there any other issues?"

But, be careful about asking that follow up question ("Are there any other issues?") too often. Ask it once and perhaps a second time. If you keep asking the question, you risk raising a "minor" point, or you risk having an issue "created" because the individual thinks you want more information.

13. Keep the Process Informal:

You've gone to great lengths to describe Mediation as a better means of dispute resolution than formal litigation. So, keep the process informal. Encourage informality by reminding the parties that there are no rules of evidence, technicalities that prevent information from being surfaced and no regulations that guide the process.

Describe the only "rule" as a commitment to listen careful, to allow each person to speak uninterrupted, and to respect the viewpoint taken.

14. Congratulate the Parties!:

At the beginning of the Mediation it is important to make sure you applaud the willingness of the parties to try Mediation, and to ask them to keep open-minded about the process.

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